

- - - - -	-X
IN THE MATTER OF:	:
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC	:
CONSENT MARKETS, TARIFFS AND RATES - GAS	:
CONSENT ENERGY PROJECTS - HYDRO	:
CONSENT ENERGY PROJECTS - CERTIFICATES	:
DISCUSSION ITEMS	:
STRUCK ITEMS	:
- - - - -	-X

OPEN MEETING

Thursday, April 20, 2006
10:10 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER SUEDEEN G. KELLY

6 SECRETARY MAGALIE R. SALAS

7

8

9

10

11

12

13

14

15

16

17

18 ALSO PRESENT:

19 DAVID L. HOFFMAN, Reporter

20

21

22

23

24

25

1 P R O C E E D I N G S

2 CHAIRMAN KELLIHER: Good morning. This open
3 meeting of the Federal Energy Regulatory Commission will
4 come to order to consider the matters that have been duly
5 posted in accordance with the Government in the Sunshine Act
6 for this time and place. Please join us in the Pledge of
7 Allegiance.

8 (Pledge of Allegiance recited.)

9 CHAIRMAN KELLIHER: We really seem to be getting
10 that down now.

11 (Laughter.)

12 CHAIRMAN KELLIHER: Let me start with a few
13 comments about the blackout in Texas that occurred on
14 Monday. This was a serious incident. It affected 200,000
15 customers. At the time of the event, there was a
16 significant amount of generation that was not available due
17 to planned maintenance -- roughly 20 percent of the
18 generation in ERCOT was unavailable due to planned
19 maintenance, something like 14,000 megawatts. The weather
20 was hotter than expected, about 5 degrees hotter than
21 projected, and ultimately the decisive factors seems to be
22 unplanned outages. Four units tripped, constituting about
23 1200 megawatts. All available generation resources were
24 committed, but no additional resources were available once
25 those four units were lost.

1 Many blackouts are caused by the violation of
2 voluntary reliability standards. That's been the case in
3 major incidents in the past. At this point, we have no
4 assessment at this time whether or not there was a violation
5 of the reliability standards that occurred in ERCOT on
6 Monday. ERCOT is conducting an investigation. The
7 Commission Staff are conducting their own analysis, and we
8 will be working closely with ERCOT and NERC to understand
9 this event.

10 I just want to make a general point that
11 reliability standards are not yet mandatory. They've
12 actually only recently been proposed to the Commission.
13 Even though they are not yet mandatory, the Commission
14 expects voluntary compliance with reliability standards
15 during this interim period leading up to Commission adoption
16 of final reliability standards.

17 Let me turn to that subject, reliability
18 standards. As you know, the Commission issued a notice on
19 Tuesday announcing a rulemaking proceeding to address the
20 reliability standards that have been proposed by NERC and
21 developed by NERC. I want to first of all comment on why
22 we're doing this through a rulemaking.

23 The Commission is proposing to establish
24 reliability standards by rulemaking to facilitation
25 discussions with the Canadians -- our Canadian regulators to

1 the north, with their reliability organizations themselves,
2 and also with the industry sectors. We think it's important
3 that we be able to have meaningful discussions as we're
4 looking to adopt reliability standards.

5 This process, this rulemaking process, really
6 began a number of months ago. The Commission anticipated
7 that the Version Zero standards be proposed. We began, a
8 number of months ago, studying the Version Zero standards so
9 we would be in a good position to act in a timely manner
10 once those reliability standards were ultimately proposed to
11 the Commission. We're now benefiting from that process
12 because we are now in a good position to begin to act.

13 What we'll do is in the notice we will issue a
14 preliminary assessment of the existing and new reliability
15 standards and we will seek public comment on that
16 preliminary assessment. That will be the first step we
17 take. Then we will have technical conferences again to get
18 additional comment on the existing and new reliability
19 standards. We will ultimately move to issue a proposed rule
20 to adopt the reliability standards that meet the statutory
21 standards some time this summer, with a final rule to
22 follow.

23 The Commission is required to assure that
24 reliability standards meet the statutory standards when it
25 moves to adopt them. We may ultimately take different

1 actions on the proposed standards and establish standards we
2 can conditionally accept or approve, some on an interim
3 basis or we can remand. And this process we've identified
4 in the notice will help us decide which in those three areas
5 we will place the proposed reliability standards.

6 Now I want to commend Joe McClellan and I want to
7 commend the Reliability Division for their work developing
8 the preliminary assessment. It will be announced in due
9 course, but I think it is a very good product. I believe we
10 anticipate issuing a proposed rule some time this summer.

11 Let's turn to some of the recent activities of
12 the Commission. Upcoming action next Monday: we will be
13 holding a joint meeting with the NRC here at the Commission.
14 We had an informal meeting with the NRC some time ago, about
15 two years ago, and now we're having a joint public meeting
16 here at the Commission on Monday.

17 On September 1st, 2004, the Commission signed a
18 Memorandum of Agreement with the NRC to facilitate
19 interactions on issues relating to the nation's bulk power
20 system and grid reliability. This MOA was enacted in the
21 wake of the August 14, 2003 blackout. The purpose of this
22 joint meeting on Monday is to continue the discussions we've
23 had with the NRC over time. We're both concerned with
24 reliability of the bulk power grid system. Reliability
25 problems on the bulk power system can affect nuclear plant

1 operations and they have affected nuclear plant operations.
2 So it's a useful subject for us to explore together.

3 Personally, I'd like to understand a little bit
4 better how the NRC has dealt with some of the issues that
5 we're now confronting. Some of the issues the Commission is
6 now confronting are fairly new to us; they're not new to the
7 NRC. How do you assure compliance? The NRC, for example,
8 established minimum standards to assure adequate protection
9 of public health and safety. They also have -- there's a
10 private sector organization, INPO, dedicated toward
11 promoting excellence in nuclear plant and safety operations.

12 How do you both assure compliance and promote
13 excellence at the same time? I think we ultimately want to
14 have that dynamic in the electric power industry.

15 How does the NRC track enforcement and compliance
16 with nuclear safety standards? That's something that's
17 important to us. Once reliability standards are
18 established, it's important for us to assure compliance and
19 to adequately enforce them.

20 Also, exploring the relationship between NRC and
21 INPO. The ERO is a new institution in the electricity
22 industry. It's a self-regulating organization. INPO is not
23 an exact proxy, but it's a rough proxy. And what is the
24 relationship between NRC and INPO? These are at least some
25 areas that I want to explore on Monday. I think it will be

1 an interesting meeting.

2 On May 18th, the Commission will meet with the
3 market monitors of the regional transmission organizations
4 and independent system operators to receive and discuss
5 presentations on their role in the regional power markets.
6 This meeting will take place following the Commission open
7 meeting on that date. The RTO/ISO market monitors will make
8 presentations about their role as market monitors, their
9 resources and how they're used, and their current market
10 monitoring priorities. The event will certainly be webcast
11 through our website.

12 Now on April 7th, the Commission held a technical
13 conference and workshop in Scottsdale, Arizona to discuss
14 the standards of conduct for transmission providers. I want
15 to thank Commissioners Brownell and Kelly for joining me in
16 Scottsdale; in fact, they were the ones that encouraged that
17 the meeting be held in the first place. Commissioner Kelly,
18 in particular, encouraged that it be held in the West.

19 We heard panelists and participants discuss
20 examples and experiences regarding implementation of the
21 standards of conduct vis- -vis the independent functioning
22 requirement, information sharing prohibitions, and
23 integrated resource planning. In one panel, Staff responded
24 to questions submitted before and during the discussion.
25 These Q and As will guide revisions and supplements to the

1 frequently asked questions on standards of conduct posted on
2 the Commission's website. The panelists and participants
3 described some of the implementation issues that highlight
4 the need for the Commission to provide greater clarity so
5 that industry compliance is as objective as possible.

6 One topic we discussed at the meeting was how can
7 we eliminate the gray in the standards of conduct rules.
8 One of the panelists pointed out -- a very experienced FERC
9 practitioner pointed out at the conference in Scottsdale
10 that he gets more questions that he can't answer on
11 standards of conduct than any other Commission matter. I
12 think he's probably not alone in that respect.

13 So we want to make compliance with Commission
14 requirements as objective as possible. I don't quite think
15 we're at that point with standards of conduct rules, but
16 hopefully we can move in that direction.

17 In other recent actions, the Commission -- on
18 April 6th and 7th, the Commission hosted a workshop with the
19 Department of Homeland Security on dam safety and security.
20 The major themes of the workshop were emergency procedures
21 and goals of dam safety and security. The workshop provided
22 an opportunity for the private industry to learn more about
23 dam safety programs and initiatives of both the Department
24 of Homeland Security and the Commission.

25 Significant progress was made in defining what

1 dam owners should put in recovery plans and operation plans
2 which could mitigate the impact of incidents at project
3 sites. Inroads were also made in coordinating initiatives
4 related to dam vulnerabilities for projects in the United
5 States, as well as Canada.

6 With regard to recent significant notationals, on
7 April 11th, the Commission issued a Notice of Intent to act
8 on petitions from several companies regarding Enron
9 termination payments. In order to process any additional
10 termination payment claims made under Section 1290 of the
11 Energy Policy Act of 2005 efficiently and on a comprehensive
12 basis, we requested additional potential applicants, if any,
13 file their claims early, along with all supporting
14 documentation and legal arguments as to why they believe
15 Section 1290 applies to their specific contracts on or
16 before May 15, 2006.

17 I just want to highlight that the decision to act
18 in this area is not a recent one. It's something we began
19 exploring a number of months ago. At the time, there were
20 settlement discussions ongoing and the Commission decided to
21 refrain in order not to interfere with those settlement
22 discussions and let them run their course. It's not a
23 recent decision to act in this area. All we've decided to
24 do is act; we haven't decided what action we will take.
25 Again, on May 15th we will know the universe of potential

1 applicants.

2 Finally -- I'll make one last point and then ask
3 my colleagues if they want to comment on these or other
4 areas -- I'd like to point out that since the March 16th
5 open meeting, the Commission has issued 108 notational
6 orders. If my math is correct, that's more than 25 a week
7 and more than five per day, and I think that really is a
8 tribute to the quiet efficiency of the Commission Staff.
9 And a lot of those notational orders are pretty significant
10 matters.

11 With that, let me ask my colleagues if they want
12 to comment on any of these areas.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMISSIONER BROWNELL: As we're always
2 challenged to be more efficient in government, maybe we
3 ought to start a little contest with some of our sister
4 agencies, to see how many notational orders they're putting
5 out on a regular basis.

6 It might be an interesting new measure of
7 government efficiency.

8 CHAIRMAN KELLIHER: Some of our sister agencies,
9 when I mentioned that we issued about 1500 orders a year,
10 the response is usually a moment of silence.

11 (Laughter.)

12 CHAIRMAN KELLIHER: They're surprised.

13 COMMISSIONER BROWNELL: And we do it relatively
14 close to the meetings at hand, too, which is also unique. I
15 think we ought to nominate ourselves for some kind of award.

16 (Laughter.)

17 COMMISSIONER BROWNELL: Just very quickly, I
18 wanted to thank our colleagues in Texas for being so
19 effective at communicating with us as events were unfolding.

20 I think that one of the lessons learned in every
21 crisis -- and we'll learn it from this -- is that you cannot
22 avoid unforeseen circumstances, but we are all better served
23 by having regular, effective, and quick communications.

24 I know that's something that the Commission will
25 be looking at in terms of how they analyze what unfolded

1 here. I look forward to working with them.

2 It's easy to jump to conclusions, as we did after
3 the blackout, as we do with high gas prices, and, generally,
4 those quick conclusions are pretty much wrong. So, I think
5 our responsible analysis of what's gone on and what we've
6 learned from that, will help us all, and I look forward to
7 that.

8 I was really -- it's tough to say "excited,"
9 about a standards of conduct conference, because that
10 suggests that there are some mental health issues going on.

11 (Laughter.)

12 COMMISSIONER BROWNELL: But it is one of those
13 areas that's just going to be incremental improvement, and
14 it's very painful to hear real-life situations where we have
15 not fully understood the business impact of our decisions.

16 I appreciate the willingness of the participants
17 to stand up and really give us those examples. I think what
18 Suede and I found in Chicago, which we keep referencing,
19 but it's a great model -- if you tell us what the problem
20 is, we can fix it. If you stand out in the hall and mumble
21 about it, we really can't.

22 So, I think that was a very important lesson for
23 us to be learned. There are a lot of interesting things
24 that you mentioned, but those are the two that stand out for
25 me, and so I appreciate it. It was a good effort.

1 Thanks for Phoenix. I think an annual event at
2 that time of year, would work for me.

3 COMMISSIONER KELLY: I think that you've covered
4 everything, Joe. I'd like to take this opportunity, though,
5 to thank the Staff, who worked on getting this open meeting
6 in place today.

7 It's been a particularly heavy agenda, as we'll
8 see as we come to these cases, and there has been a lot of
9 work implementing other sections of EAct with the PUHCA
10 repeal and the expanded authority under Section 203, the
11 accounting standards and forms.

12 It's been very detailed and has taken a lot of
13 Staff effort, so I want to thank them for all the work that
14 they've done.

15 CHAIRMAN KELLIHER: I want to thank the Staff, as
16 well, and my colleagues. We had a grand total one strike
17 since the Sunshine Act Notice, and I think that shows
18 efficiency. It also shows a tendency to actually dispose of
19 matters, rather than just discuss them.

20 But we had a couple of near misses, and I want to
21 thank Staff for their hard work to help us avoid additional
22 strikes.

23 COMMISSIONER BROWNELL: At least in one case, it
24 was kind of an unspoken commitment to end the pain, I think.

25 (Laughter.)

1 COMMISSIONER BROWNELL: We were actually talking
2 about the great job Staff has done, and the hard work that's
3 gone into it, and, candidly, Mr. Chairman, we think it
4 deserves more than a cake. We were thinking, at the
5 appropriate offsite location, a little champagne would
6 probably be a good idea.

7 CHAIRMAN KELLIHER: Madam Secretary, let's turn
8 to the consent agenda.

9 SECRETARY SALAS: Good morning, Mr. Chairman;
10 good morning, Commissioners. Mr. Chairman, as you pointed
11 out, the one item that has been struck from the agenda since
12 the issuance of the Sunshine Notice on April 13, was E-16.

13 Your consent agenda for this morning is as
14 follows: Electric Items - E-6, 7, 9, 10, 11, 12, 13, 14,
15 15, 18, and 19.

16 Gas Items: G-2 and G-4.

17 Hydro Items: H-1, 2, 3, 4, 5, and 6.

18 Certificates: C-1 and C-2.

19 And Commissioner Brownell votes first this
20 morning.

21 COMMISSIONER BROWNELL: Aye.

22 COMMISSIONER KELLY: Aye.

23 CHAIRMAN KELLIHER: Aye.

24 SECRETARY SALAS: The first item for discussion
25 this morning is E-2. This is transactions subject to FPA

1 Section 203. It is a presentation by Andrew Mosier, Phillip
2 Nicholson, and Ron Lafferty.

3 MR. MOSIER: Good morning, Mr. Chairman and
4 Commissioners. Before I begin our presentation this
5 morning, the Team would like to acknowledge Sarah McClain
6 for her contributions to this Draft Order.

7 E-2 is an Order on Rehearing, Order No. 669,
8 which adopted or modified regulations to implement last
9 year's statutory changes to FPA Section 203.

10 The Draft Order makes a number of changes to the
11 Commission's rulings in Order No. 669, that will further
12 facilitate investment in the electric utility industry, and
13 that will strengthen the Commission's review of Section 203
14 transactions with respect to potential effects involving
15 cross-subsidization.

16 Among these changes are the following: The Draft
17 Order grants a blanket authorization for acquisitions of
18 securities, of QFs, EWGs, and FUCOs by holding companies
19 that are holding companies solely by virtue of their
20 ownership of EWGs, QFs, and FUCOs.

21 The Draft Order also should facilitate investment
22 by banking-type institutions and financial houses in the
23 electric industry, by granting blanket authorization for
24 acquisitions of securities under Section 203(a)(2), in
25 connection with fiduciary underwriting and hedging

1 activities.

2 These blanket authorizations would be subject to
3 certain conditions and reporting requirements.

4 The Draft Order also facilitates the continued
5 participation of public utilities in holding company money
6 pools, and, therefore, ensures that our regulations do not
7 create new barriers to such arrangements.

8 However, this participation is subject to the
9 companies' implementing adequate safeguards to prevent
10 cross-subsidization of non-utility associate companies and
11 pledges or encumbrances of utility assets.

12 The Draft Orders supplements the verification
13 requirement previously applicable to Section 203
14 applications that do not receive blanket authorization, with
15 a requirement that applicants include four detailed showings
16 that the transaction will not result in cross-subsidization
17 of non-utility associate companies, and pledges or
18 encumbrances of utility assets for the benefit of associate
19 companies within a holding company's system.

20 If the applicants cannot make these showings,
21 they must demonstrate how the transaction is consistent with
22 the public interest. That concludes our presentation.

23 COMMISSIONER BROWNELL: I think that there are
24 very important elements in this, that respond to the issues
25 that were raised by a number of market participants,

1 including Public Power, whose very specific concerns, I
2 think, were addressed, on the issues of cross-subsidization,
3 which, for me, is going to be one of the biggest challenges
4 that the Commission faces on a going-forward basis.

5 It's very complicated, it's very hard to find,
6 yet it is critically important for customer protections.

7 I also think that the issue of blanket exemptions
8 to increase investment, reflects a better understanding of
9 the financial industry and their interests, without in any
10 way putting at risk, the interests of the customers.

11 So, I think, while there are not massive changes
12 here, I think they reflect a good reading of the statutory
13 language and the intent of Congress, which is, after all,
14 what we're all about.

15 So I appreciate your efforts to really dig down
16 into the comments and understand how we can make changes
17 that responded to concerns, without in any way compromising
18 the intent of the language.

19 COMMISSIONER KELLY: I add to Nora's comments.
20 We didn't make many changes, but we've provided a number of
21 clarifications and we've added details that I think makes it
22 quite clear that we are concerned about implementing this
23 new authority and ensuring that there are no cross-
24 subsidizations in holding company mergers, in particular, or
25 acquisitions, unless, for some reason, we find that they are

1 in the public interest.

2 This is also an evolving area, and it's new
3 authority for us under Section 203, and we we've said in
4 this final Rule, that we will continue to look at the Rule.

5 In particular, we're going to be having a
6 technical conference, probably in February, to look at
7 several issues that will get the benefit of reviewing with
8 some experience behind us.

9 One of them is whether blanket authorizations
10 that we've granted in this proceeding, should be revised.
11 Another is whether additional protection against cross-
12 subsidization, and pledges, or encumbrances of utility
13 assets, is needed.

14 There are a number of commenters that asked us to
15 put those kinds of protections in place now. I, for one,
16 felt we weren't ready to determine whether they were needed,
17 and, if something was needed, what, exactly, it should be.

18 Also, we'll be looking at whether the Commission
19 needs to revise its current merger policy. There have been
20 requests by a number of commenters for us to take into
21 account that mergers are bigger and broader, and ask
22 ourselves whether existing merger policy is up to the task,
23 so we will be considering that at the technical conference,
24 and also whether the Commission should codify specific
25 safeguards that must be adopted for money pool transactions.

1 That was also an area of concern.

2 We, again, expect that with six or eight months
3 more experience under our belts, we'll have a better take on
4 that.

5 CHAIRMAN KELLIHER: Great. Staff explained the
6 substance of the Rehearing Order, and I won't belabor that.
7 I'd like to explain, really, what I think is the
8 significance of the merger rule, as revised by the Rehearing
9 Order.

10 I'd really start off with the general point that
11 the Commission's role in the area of electricity regulation,
12 was, I think, succinctly described in the NAACP decision
13 where the D.C. Circuit said the Commission's primary task,
14 however -- and there is no doubt -- is to guard the consumer
15 from exploitation by non-competitive electric power
16 companies.

17 I think the changes Congress made in the Energy
18 Policy Act last year, had that exactly in mind. The
19 legislative change is very significant, and it does improve
20 our ability to prevent exploitation of the consumer.

21 I think what we've done here is faithfully
22 execute the merger provisions that had the consumer squarely
23 in mind.

24 The Energy Policy Act made a number of
25 significant changes in the Commission's merger review

1 authority: First, it expanded the scope of our Section 203
2 authority, to include generation facilities.

3 That significantly improves our ability to
4 prevent the accumulation of generation market power or
5 horizontal market power. That's something I personally have
6 supported.

7 Actually, I was thinking this morning, going back
8 eight years to when I was counsel on the Committee. That
9 was one of the things I worked with Cindy Marlette on, eight
10 years ago, and it's nice to see it not only finally get into
11 the U.S. Code, but now formally, finally, in the
12 Commission's Rules.

13 The second change was expanding the scope of
14 Section 203 to holding company mergers, including the
15 acquisition of securities by holding companies and their
16 subsidiaries. That has resulted in a significant increase
17 in Commission review of holding company securities
18 transactions, as reflected in the recent National Grid
19 Order.

20 A third major change is, the Energy Policy Act
21 required the Commission to prevent cross-subsidization at
22 the point of a merger. That's an area where I think we also
23 faithfully execute the new law with respect to cross-
24 subsidization in the Rehearing Order.

25 In the Merger Rehearing Order, we strengthen the

1 consumer, the customer protection provisions of the Final
2 Rule, by adding certain evidentiary showings. We broaden
3 some of the blanket authorizations that were in the Final
4 Rule, previously granted in the Final Rule, and we granted
5 some new blanket authorizations.

6 The Merger Rehearing Order, like the PUHCA appeal
7 Rehearing Order, should facilitate investment in the
8 electricity industry by traditional utilities, non-
9 traditional utilities, and financial institutions.

10 I think we appropriately seek to accommodate
11 efficient, day-to-day financial operations of utility
12 systems, in both of the Rehearing Orders.

13 We also seek to ensure that captive customers of
14 traditional utilities, are protected by guarding against
15 cross-subsidization and pledges and encumbrances of utility
16 assets.

17 I think the biggest change to Order 669, made by
18 the Rehearing Order, relates to how the Commission will
19 prevent cross-subsidization. We will now apply the four-
20 part test proposed in Order 669 for foreign acquisitions, to
21 domestic mergers and acquisitions.

22 Extending the reach of this four-part test to
23 domestic acquisitions, significantly strengthens customer
24 protection provisions in Order 669, and helps guard against
25 cross-subsidization.

1 In the Rehearing Order, we require that all
2 Section 203 applicants that do not have blanket
3 authorizations, include detailed showings that all four
4 tests of the four-part framework, are met, or, if cross-
5 subsidization or the pledge of encumbrance of utility assets
6 were to occur, how such cross-subsidization, pledges, or
7 encumbrances, would nonetheless be consistent with the
8 public interest.

9 So I think we've done a good job here. We'll
10 see. Judicial review will ultimately see how good a job
11 we've done, but I think we've done a pretty good job. We
12 certainly have tried.

13 With that, I'm ready to vote. Colleagues?

14 COMMISSIONER BROWNELL: Aye.

15 COMMISSIONER KELLY: Aye.

16 CHAIRMAN KELLIHER: Aye. Thank you, Staff, that
17 was excellent work.

18 SECRETARY SALAS: Second for discussion, we will
19 take up two items jointly: M-1, Repeal of the Public
20 Utility Holding Company Act of 1935, and enactment of the
21 Public Utility Holding Company Act of 2005; and M-2,
22 Financial Accounting, Reporting, and Records Retention
23 Requirements under the Public Utility Holding Company Act of
24 2005.

25 This is a presentation by Larry Greenfield,

1 Abraham Silverman, Jim Guest, Julia Lake, and Steven Hunt.

2 MR. GREENFIELD: Mr. Chairman, Commissioners,
3 good morning. On August 8th, 2005, the President signed
4 into law, the Energy Policy Act of 2005. Title XII of that
5 Act repealed the Public Utility Holding Company Act of 1935,
6 and enacted in its place, the Public Utility Holding Company
7 Act of 2005.

8 On December 8th of last year, the Commission
9 issued Order No. 667. As relevant today, that Order did two
10 things: First, it adopted regulations to implement the new
11 Public Utility Holding Company Act of 2005; second, it
12 indicated that the Commission intended to initiate a
13 separate rulemaking proceeding to address the accounting and
14 record retention requirements that would be applicable to
15 holding companies and their service companies, and that the
16 Commission intended to issue a Final Rule, well before the
17 end of this year.

18 M-1 on today's agenda, is a Draft Order on
19 Rehearing of Order 667. As will be explained at greater
20 length by Abe Silverman of the Office of General Counsel,
21 this Order responds to the various Requests for Rehearing,
22 and, as well, makes a number of clarifying revisions to the
23 regulatory text.

24 M-2 is the promised Draft Rulemaking on
25 accounting and record retention requirements applicable to

1 holding companies and their service companies. As will be
2 explained at greater length by Jim Guest of the Office of
3 Enforcement, it proposes a new Uniform System of Accounts,
4 based on our own existing Uniform System of Accounts, as
5 well as the SEC's Uniform System of Accounts that will be
6 applicable to the centralized service companies.

7 It further proposes new record retention
8 requirements that would be applicable to both holding
9 companies and their service companies, and it proposes
10 revisions to the existing FERC Form No. 60, the Annual
11 Report already required to be filed by centralized service
12 companies to conform to the new Uniform System of Accounts.

13 With this introduction, I will turn the matter
14 over to Mr. Silverman and Mr. Guest.

15 MR. SILVERMAN: Good morning. In M-1, the Draft
16 Order affirms most of the key determinations of Order No.
17 667. However, the Draft Order also grants rehearing on
18 several issues.

19 Most of the changes are designed to give guidance
20 to companies on how to comply with the new PUHCA 2005
21 regulations.

22 Under Order No. 667, many holding companies are
23 granted either an exemption from the federal books and
24 records provisions of PUHCA and the Commission's PUHCA
25 regulations, and will receive a Commission-granted waiver of

1 the books and records regulations.

2 The Draft Order on Rehearing clarifies the
3 procedures that different types of holding companies must
4 use, in order to claim either the exemption or the waiver.

5 As required by PUHCA 2005, Order 667 grants
6 holding companies owning only exempt wholesale generators,
7 qualifying facilities, foreign utility companies, or any
8 combination of the three, an exemption from the federal
9 books and records provisions of PUHCA 2005, as well as the
10 Commission's PUHCA regulations.

11 The Draft Order on Rehearing clarifies that such
12 entities are, indeed, holding companies under the
13 Commission's Regulations, but that they receive an automatic
14 exemption from PUHCA 2005 and the Commission's books and
15 recordkeeping requirements.

16 The Draft Order on Rehearing also clarifies that
17 those holding companies do not need to make any additional
18 filings with the Commission in order to take advantage of
19 the automatic exemption.

20 Order No. 667 also grants a waiver to holding
21 companies operating substantially within a single state.
22 The Draft Order on Rehearing clarifies that a holding
23 company will qualify for the single-state holding company
24 system waiver, when no more than 13 percent of its revenues
25 attributable to its public utility company operations, are

1 derived from outside a single state.

2 This is consistent with the test applied by the
3 SEC for the intrastate holding company exemption under the
4 1935 Act. The Draft Order on Rehearing also contains the
5 following new consumer safeguards:

6 Order No. 667 provides that a company may not
7 rely on any exemption or wavier, if the facts surrounding
8 its exemption or waiver change.

9 The Draft Order on Rehearing would now require
10 holders of an exemption or waiver, to notify the Commission
11 within 30 days, whenever there is a change of material fact
12 that may affect the exemption or waiver.

13 The Draft Order on Rehearing also imposes and
14 additional reporting requirement on special-purpose service
15 companies that are selling non-power goods and services or
16 construction services to public utilities.

17 Specifically, the Draft Order on Rehearing
18 requires any service company that is not required to file
19 the more detailed annual FERC Form 60, to file a narrative
20 description, describing what the service company does.

21 As service companies continue to evolve, this
22 requirement will allow the Commission to monitor changes in
23 the industry, and to take further action, if necessary.

24 Finally, the Draft Order on Rehearing continues
25 to emphasize that nothing in the Public Utility Holding

1 Company Act of 2005, diminishes the Commission's authority
2 under the Natural Gas Act or Federal Power Act, to gain
3 access to holding companies' and service companies' books
4 and records, and to ensure just and reasonable rates.

5 I'll now turn over the presentation to Jim Guest,
6 who will discuss M-2.

7 MR. GUEST: Before I move further into the
8 presentation, I would like to first acknowledge and thank
9 the individuals who worked so hard in developing the NOPR
10 for Commission consideration this morning.

11 They are: Rosemary Womack, Steven Hunt, Brian
12 Holmes, Julie Kuhns, Mary Lauerman, and Janice Garrison-
13 Nicholas, all of the Office of Enforcement; as well as Linda
14 Patterson from the Office of Administrative Litigation, and
15 Julia Lake and Larry Greenfield of the Office of General
16 Counsel.

17 In Order No. 667, the Commission prescribed
18 uniform accounting and reporting requirements for
19 centralized service companies within holding company
20 systems, and records retention requirements for both service
21 companies and holding companies.

22 In that Order, the Commission announced its
23 intention to modify the existing Uniform System of Accounts
24 for public utilities and licensees and natural gas
25 companies, to accommodate centralized service companies' use

1 of those systems.

2 The Commission also announced its intention to
3 similarly modify the existing records retention requirements
4 that are contained in Parts 125 and 225 of the Commission's
5 Regulations.

6 Since the issuance of Order No. 667, the Staff
7 has examined in greater depth, some of the implementation
8 issues associated with revising the Commission's existing
9 Uniform System of Accounts and records retention
10 requirements for public utilities and licensees, and for
11 natural gas companies, to cover the service companies and
12 the holding companies.

13 In doing so, the Staff concluded that modifying
14 the existing accounting and records retention requirements
15 to accommodate the service companies and holding companies,
16 would make understanding and applying the accounting and
17 records retention requirements, difficult for users of those
18 systems.

19 Therefore, the Staff recommends, and this Notice
20 of Proposed Rulemaking reflects adding a new Uniform System
21 of Accounts for centralized service companies in Part 367 of
22 the Commission's Regulations, adding records retention
23 requirements for holding companies and service companies in
24 new Part 368, revising Form No. 60, the Annual Report for
25 Centralized Service Companies, to provide for reporting

1 consistent with the proposed Uniform System of Accounts,
2 including the Form 60 filing requirements in a new Part 369,
3 and also providing for electronic filing of the Form 60.

4 In developing the proposed regulations, Staff was
5 guided by three overarching objectives: First, the new
6 accounting and records retention requirements, should mirror
7 the existing requirements contained in Parts 101, 201, 125,
8 and 225 of the Commission's Regulations for Public Utilities
9 and Natural Gas Companies, to the maximum extent
10 practicable, but should exclude those provisions that are
11 not relevant to centralized service companies.

12 Second, the new accounting requirements should
13 allow for the consolidation of service company financial
14 information with the financial information of associate
15 public utilities and licensees and natural gas companies, as
16 needed for stockholder and SEC reporting.

17 Third, the new Uniform System of Accounts for
18 Centralized Service Companies should include requirements
19 that reflect aspects of business operations that are unique
20 to those service companies.

21 While these new regulations appear lengthy, we
22 believe the detail will actually make it simpler and easier
23 for service companies and holding companies to comply with
24 our requirements.

25 These regulations are proposed to be made

1 effective, January 1, 2007. In addition, the Notice of
2 Proposed Rulemaking directs Staff to hold a technical
3 conference to provide interested parties an opportunity to
4 discuss the proposed regulations.

5 This concludes our joint presentation. Staff is
6 available for any questions.

7 CHAIRMAN KELLIHER: Thank you. First of all, I
8 want to recognize the hard work of the PUHCA team. I still
9 find it odd that repealing a 70-year old law, engendered
10 more public comment than erecting a whole new reliability
11 institution, but it did.

12 There are over 2,000 pages of comments as of last
13 February, and I don't know what the grand total ended up
14 being, with respect to PUHCA repeal. But you've had a lot
15 of work to do, and I think you did it very well. I want to
16 thank you for your very complete description of the
17 Rehearing Order.

18 Given the extent of public interest, it's
19 appropriate that your presentation was as complete as it
20 was.

21 Let me just make a few general comments. I don't
22 think I could add to your description of the substance of
23 the Rehearing Order, but the Rehearing Order recognizes that
24 the clear Congressional intent in this area is to repeal the
25 regulatory regime established by the '35 Act.

1 Congressional intent really couldn't be any more
2 clear. The title of Subtitle F of the Energy Policy Act of
3 2005, is simply "Repeal of PUHCA."

4 Congress wanted to eliminate that entire
5 regulatory regime. Although Subtitle F does establish a new
6 PUHCA 2005, it is a quite different and quite reduced regime
7 than the '35 Act.

8 That somehow hasn't really been broadly
9 recognized, but PUHCA 2005 is really just a pale shadow of
10 what the '35 Act was.

11 Now, the Rehearing Order does improve and clarify
12 the Commission's new regulations for implementing the
13 Commission's new authorities concerning access to books and
14 records of holding companies and other companies in holding
15 company systems and our review and authorization of the
16 allocation of costs for non-power goods and services.

17 The PUHCA repeal Rehearing Order should
18 facilitate investment in the electricity industry by
19 traditional utilities, nontraditional utilities, and
20 financial institutions.

21 It also should accommodate efficient day-to-day
22 financial operations of utility systems, while assuring that
23 captive customers are protected.

24 There is overlap between the merger review
25 Rehearing Order and the PUHCA Rehearing Order. That's why

1 we're taking them both up here at the same time.

2 As to the two Orders, there's at least a dotted-
3 line relationship between the two, and I think we recognize
4 that.

5 Contemporaneously with issuing the Rehearing
6 Order, we are issuing new proposed rules on accounting and
7 record retention requirements. Those are necessary for
8 implementing repeal of the '35 Act and implementation of
9 PUHCA 2005.

10 These proposed rules will supplement the
11 Commission's existing customer protection efforts. In the
12 PUHCA repeal Rehearing Order, we find that many of the
13 rehearing requests address issues beyond the scope of the
14 very limited authority granted the Commission under PUHCA
15 2005, and that concern matters that we believe are better
16 handled under our existing legal authority.

17 Other matters raised on rehearing, the Commission
18 does acknowledge and make certain revisions, clarifications,
19 or indicates that we'll address them at a future technical
20 conference, but, again, I just want to commend you for your
21 hard work in this area. I think it's a good product.

22

23

24

25

1 COMMISSIONER BROWNELL: Hard to add, except from
2 the wonderfully-detailed presentation and your comments, Mr.
3 Chairman, that the world might look at the 268 page M2
4 proposal and think that in fact we're reinventing the wheel.
5 I would only propose that as complicated as much of this
6 sounds, it does pull from our existing Uniform System of
7 Accounts, it does call for technical conferences to make
8 sure we're getting it right, and it think it does harmonize
9 the various elements in a way that, in spite of the
10 perception that it looks complicated, in fact should make
11 life simpler. If it doesn't, we'll need to look at ways to
12 streamline it. But under the new responsibilities, I think
13 it does get us to a place where we can fulfill our new
14 obligations while making it easier for businesses to address
15 the new requirements.

16 I think that the first reaction of people is
17 going to be oh my God, once again, they've complicated our
18 world. But I think, on the contrary, it has just the
19 opposite effect once it gets implemented. I thank the team
20 who worked on this. I appreciate what you do when I look at
21 orders like these, because I couldn't possibly do this for a
22 living.

23 (Laughter.)

24 COMMISSIONER BROWNELL: Thank you for sorting it
25 all out.

1 COMMISSIONER KELLY: Being a lawyer by trade,
2 I've been trained to try and encapsulate what we're doing or
3 what my client is doing in a sentence or two and to also
4 make that sentence one that will engage the audience and be
5 memorable. That's been a big challenge, with trying to
6 encapsulate --

7 (Laughter.)

8 COMMISSIONER KELLY: -- in one sentence what
9 we're doing here. But since I had so much fun trying to
10 achieve that, I'm going to repeat it. But I failed
11 miserably in trying to phrase it in a way that will engage
12 you or otherwise be memorable. But what we're doing here is
13 looking at the primary requirement of the new PUHCA, which
14 is that all holding companies and their associate companies
15 maintain books and records and make them available to FERC.
16 That's what these forms are about, how to do it in a good
17 way. But that's a very broad requirement applying to all
18 holding companies and associate companies.

19 So the legislation also said -- the legislation
20 acknowledges that there are some holding company entities
21 and there are some holding company transactions that are not
22 relevant to the rates of wholesale customers, which is what
23 our jurisdiction's about. So Congress basically said
24 although we have this broad requirement that all holding
25 companies and their associates maintain all books and

1 records, you need to figure out which kinds of holding
2 companies and which kinds of transactions should be exempt
3 from that requirement, because what they're doing is not
4 relevant to your jurisdiction.

5 So that's what we're doing. We're trying to
6 figure out what those exemptions are for the holding
7 companies and for the transactions. And it's taken a lot of
8 work. It's required Staff to get into the weeds. It's
9 required the Commissioners and the Commissioners' staff to
10 get into the weeds. We've done that and I'm very proud of
11 the work that you've done. I think that we have, in this
12 order, fulfilled our obligation to ensure that the books and
13 records that need to be maintained will be in a very
14 efficient way. The ones that don't have to be, won't have
15 to be.

16 But I would like to also mention that our
17 authority under other provisions of the Federal Power Act
18 and the Natural Gas Act will enable us to get to specific
19 books and records, if we need to, on a case-by-case basis.

20 So thank you very much for all your hard work.

21 CHAIRMAN KELLIHER: Great. Shall we vote?

22 COMMISSIONER BROWNELL: Aye.

23 COMMISSIONER KELLY: Aye.

24 CHAIRMAN KELLIHER: Aye.

25 Thank you.

1 SECRETARY SALAS: Next for discussion is E-4, PJM
2 Interconnection, LLC. This is a presentation by Susanna
3 Erlich, John McPherson, Anna Cochrane, Tatyana Kramskaya,
4 David Mead, and Chris Wilson.

5 MS. ERLICH: Good morning, Chairman Kelliher,
6 Commissioner Brownell, Commissioner Kelly. I'm Susanna
7 Erlich of the Office of the General Counsel. With me today
8 at the table are Anna Cochrane, David Mead, John McPherson,
9 Tatyana Kramskaya from the Office of Energy Markets and
10 Reliability and, from the Office of General Counsel, Chris
11 Wilson.

12 Also making major contributions to this team are
13 Michael Goldenberg, Katherine Waldbauer from the Office of
14 General Counsel, and Daniel Nowak, Deborah Ott, and Dionne
15 Thompson from the Office of Energy Markets and Reliability

16 PJM is responsible for ensuring the reliability
17 of its system and currently administers the capacity
18 obligations of its load-serving entities. According to PJM,
19 the limitations of its current capacity construct will
20 result in multiple reliability criteria violations in
21 eastern PJM, particularly in New Jersey, the Delmarva
22 Peninsula, and the Washington/Baltimore area as early as
23 2006. PJM also anticipates that other parts of the PJM area
24 are trending in this same direction.

25 PJM has identified two principal deficiencies in

1 its current capacity construct hindering long-term
2 reliability. These deficiencies are the lack of a long-term
3 forward capacity commitment and a lack of locational
4 capacity pricing. Because of these deficiencies, PJM argues
5 the current construct does not provide meaningful price
6 signals to sustain long-term investment in capacity
7 resources.

8 At this point, John McPherson will highlight some
9 of the findings of the order for you today.

10 MR. MC PHERSON: The draft order before you finds
11 that, as a result of a combination of the above-mentioned
12 factors and other considerations, PJM's existing capacity
13 construct is unjust and unreasonable as a long-term capacity
14 solution. Further, the draft provides Commission guidance
15 regarding PJM's proposed reliability pricing model, or RPM,
16 which PJM offers as a replacement for the current capacity
17 construct. It also finds that with some adjustments and
18 clarification the RPM proposal may form the basis for a just
19 and reasonable capacity market. The draft guidance order
20 also establishes a technical conference and a paper hearing
21 to address remaining issues before the Commission can issue
22 a final order on the RPM proposal. Finally, the draft order
23 encourages parties to negotiate a resolution of the RPM
24 proposal.

25 In this order, the Commission makes the following

1 findings with respect to the elements of the RPM proposal:
2 locational capacity markets. The draft order finds that the
3 capacity construct must reflect locational values of
4 capacity. It proposes to establish a paper hearing to
5 determine the best method for ensuring that the locational
6 capacity markets reflect transmission constraints within
7 PJM.

8 Forward procurement. The draft order accepts
9 PJM's proposal to require four-year forward procurement of
10 capacity and sets for paper hearing the duration of such
11 commitments.

12 Integration of generation demand response and
13 transmission. The draft order finds that RPM adequately
14 integrates demand response resources and it encourages PJM
15 to work with its regional transmission expansion planning
16 process to coordinate transmission planning with the
17 capacity market and would require PJM to report to the
18 Commission with respect to such coordination mechanism for
19 acquiring capacity.

20 The draft order finds it appropriate to allow
21 dual methods for load-serving entities to satisfy capacity
22 obligations and establishes a technical conference to
23 further explore certain aspects of these approaches. Load-
24 serving entities would have the option of satisfying the
25 capacity obligations by either, one, participating in PJM's

1 proposed capacity auction that relies on a downward-sloping
2 demand curve or, two, choose an alternative to the forward
3 procurement auction if they identify sufficient capacity to
4 meet their loads which capacity is physically deliverable
5 and which is under contract to the LSE or under the LSE's
6 ownership or control in advance of the forward procurement
7 auction.

8 Mitigation. The draft order defers ruling on
9 PJM's market power mitigation proposal. While the draft
10 order acknowledges that market power may be a concern within
11 RPM, the draft order establishes a paper hearing to further
12 explore whether mitigation is necessary and, if so, what
13 mitigation measures are appropriate.

14 This concludes our presentation.

15 CHAIRMAN KELLIHER: Thank you very much.

16 COMMISSIONER BROWNELL: Thank you.

17 I think that the Staff and Commissioners have
18 really done a good job given the record that they have of
19 making some tough cuts. Capacity markets constructs seem to
20 come with a fair amount of emotional and political baggage,
21 but I think here we have the opportunity to take this as a
22 starting point and to work towards resolution of the
23 remaining issues. And, to the extent that there continues
24 to be disagreement on the cuts that we've made to somehow
25 bring those to resolution, I think the items that we have

1 set for hearing or technical conference bear further
2 development.

3 I would suggest the locational proposal that was
4 made in terms of a transition could end up being more
5 complex than the market can bear in a market that has a
6 tremendous amount of complexity and, in terms of being
7 supported by IT costs, which we've all become increasingly
8 aware about, I think needs further development.

9 The demand curve is always a thing of voodoo, but
10 I think a technical conference can answer people's
11 questions. That's an element that can work.

12 I would encourage the parties to continue toward
13 resolution. This is not a decision for a new model that can
14 be put off indefinitely. Some would argue it's two or three
15 years too late. I think we've done the responsible thing in
16 making some cuts; we can do the responsible thing and
17 continue to do that if the parties can't come to resolution.

18 We do our best to support and encourage effective
19 resolution of those, but I think we will need to make
20 decisions, because I don't want to come as precariously
21 close as we have in other parts of the country. Capacity
22 constructs in and of themselves are artificial answers where
23 we don't, in fact, have fully developed markets without
24 mitigation. That's the price we're paying.

25 For those who are continuing to propose

1 alternatives like energy-only markets, I think that's a
2 great idea if you are prepared to take the political
3 repercussions of what that means in terms of economics and
4 price signals to customers. I don't necessarily agree over
5 time that that's where we need to go, but when you look at
6 the consequences of the lifting of price caps in Maryland
7 and the political reaction to what actual prices are, I
8 think you have to say perhaps we're not willing to make that
9 decision. So while that's an interesting concept, it's not
10 one that seems to me that's particularly productive to
11 continue to pursue and throw on the table without a
12 willingness to get the buy-in from the people who have to
13 answer the questions to consumers.

14 So I'm really pleased at how far this has come,
15 but I think it needs to go further faster. And while we've
16 allowed process, we can't afford to use the process to
17 continue to avoid to make tough difficult decisions. Nobody
18 wants to buy the insurance policy, as you point out, until
19 the house burns down, the car crashes or if you die and then
20 you don't like it. But that's what this fundamentally is
21 and that's what we need to do.

22 I also continue to have reservations about
23 mitigation upon mitigation upon mitigation. Market power is
24 an issue. We saw some exercise of market power in the old
25 capacity construct at PJM. But is it mitigation to deal

1 with market power or is it mitigation because we just have
2 grown enamored with mitigation because we don't want to do
3 the tough stuff? That's my take on this. But good step
4 forward, but let's take some other quick steps. No more
5 baby steps in PJM on capacity markets.

6 COMMISSIONER KELLY: I do think that this is a
7 significant big step on the road to evolving an electricity
8 market in PJM that efficiently and effectively meets the
9 demands of PJM's customers. In this case we're talking
10 about their demand for long-term electric capacity. The
11 draft order finds that the current non-locational capacity
12 construct is no longer just and reasonable basically because
13 it's the case in PJM that not all participating generation
14 can reach all the load throughout the PJM region, which I
15 think can fairly be said to be massive today. Yet they're
16 currently all priced the same as though they can meet. So
17 prices for capacity that are set equal based on the idea
18 that all participating generation is physically deliverable
19 when it actually isn't are appropriately found to be unjust
20 and unreasonable and that's what we do today.

21 Furthermore, setting just and reasonable rates
22 for capacity is an important effort with very far-reaching
23 results, because if prices are too high more generation
24 could be built than is needed. On the other hand, perhaps
25 even of more importance today, if the prices are too low,

1 not enough generation will be built. In that case, we risk
2 serious consequences ranging from the merely unpleasant --
3 such as increased rates for energy -- to the downright
4 disruptive and possibly dangerous such as brownouts and
5 blackouts. And obviously the issue must be addressed.

6 That's what we've attempted to do in this order
7 to provide guidance on addressing this issue, to narrow the
8 focus to the elements of the capacity construct that need to
9 be focused on. And I want to stress that this draft order
10 proposes to address this in a way that's consistent with and
11 respects traditional state jurisdiction over generation.

12 One example of this is the opt-out findings in
13 this order, which will ultimately permit any company that
14 can prove that it can meet its own capacity needs over a
15 reasonable period of time to opt-out of PJM's capacity
16 construct. That will be a choice that's made by each
17 utility in connection with its state regulators.

18 I think it's appropriate that we gave our nod of
19 approval to that provision. Our job here at the Commission
20 is to get in place a system that works, provides for long-
21 term capacity at just and reasonable rates for those who
22 choose not to opt-out. I'd like to thank Staff for their
23 work on this. I think that we hit the right note on
24 providing guidance without overprescribing what needs to be
25 done.

1 Thanks.

2 CHAIRMAN KELLIHER: I also want to thank Staff as
3 well. We acted on this more quickly than I would have
4 anticipated, to be honest. I know it's due to the hard work
5 of the Staff and also the way the three offices worked
6 together on this order. I think the merits of the order and
7 the substance of the order has already been described, and I
8 really won't go over that. But I will talk about at least
9 my general views on capacity markets and resource adequacy.

10 In this order, though, the Commission, as Staff
11 has indicated, finds that the current PJM capacity market is
12 unjust and unreasonable and we find its unjust and
13 unreasonable because it doesn't support continued generation
14 entry. It's frankly not very difficult to reach this
15 conclusion. A new generator investing in PJM cannot expect
16 to recover its costs through energy and capacity revenues.
17 That's really the nut of the problem.

18 That wouldn't really have any import if there
19 wasn't a need to build generation anywhere in PJM, but there
20 is. That need was made plain very dramatically at the
21 technical conference the Commission held in February. The
22 visual about reliability violations in eastern PJM occurring
23 as early as this year really made the case that there is a
24 need to increase generation in eastern PJM.

25 Under the current capacity construct, generation

1 additions in eastern PJM are valued the same as in the areas
2 of PJM with surpluses. Not only will generation additions
3 in PJM slow to a crawl, it's possible that retirements may
4 actually outpace generation additions for a net loss of
5 electricity supply. That is the situation that confronted
6 California leading up to the western electricity crisis in
7 the year 2000.

8 The Commission has a legal duty to assure just
9 and reasonable wholesale power rates. That doesn't mean we
10 have to guarantee the profitability of generators or new
11 entrants, and that is not what we're doing here today.

12 But a capacity market that does not recognize the
13 existence of transmission constraints or that those
14 transmission constraints are getting worse and a capacity
15 market that places no value on locating generation where
16 it's most badly needed and that produces shortages and
17 serious reliability problems is simply not just and
18 reasonable. The Commission does have a duty as well to
19 assure reliability. Doing nothing in the face of imminent
20 serious reliability violations is just simply not an option.

21 I want to highlight the approach we're taking
22 here and compare and contrast it to the two approaches that
23 we took in New England. In June 2004, we issued a New
24 England LICAP order that adopted a particular approach
25 towards capacity markets in New England. We made merit

1 calls really up and down the line. That led to a great deal
2 of criticism of the Commission that we were ignoring
3 workable alternatives that were being advanced in New
4 England. I think it's probably fair to say we could call
5 this approach LICAP-1 just for full disclosure. I voted for
6 LICAP-1. I voted for the June 2004 order.

7 We heard the region's criticism particularly last
8 summer and we changed course. We held oral argument in
9 September. We encouraged parties to reach consensus. We
10 encouraged settlement. I think the oral argument was very
11 helpful. There was really universal recognition in the
12 region that the status quo was failing, that the region was
13 facing an imminent serious electricity problem and that the
14 status quo was failing to address that problem. There's
15 also universal recognition that there is a need for the
16 Commission to act.

17 There was a problem, it wasn't going away, and
18 ultimately the Commission would have to solve the problem.
19 We told the region that we recognized there was more than
20 one way to structure a just and reasonable capacity market.
21 We challenged New England to come around around a workable
22 alternative. The region rose to the challenge. They asked
23 the Commission to appoint a settlement judge to facilitate a
24 settlement. We did just that and, by all accounts, Judge
25 Brenner did a tremendous job.

1 This approach, developing a consensus that the
2 status quo is failing, encouraging a region to control its
3 own destiny, to develop a workable alternative that is just
4 and reasonable while preparing to act independently if the
5 region fails, I would call this approach LICAP II. That's
6 ultimately the course we decided on last fall.

7 That approach produced a settlement that's now
8 before the Commission. Most of the hundred parties joined
9 in the settlement, although there are some significant non-
10 settling parties. Of course, we can't address the merits of
11 the proposed settlement, but one reason I think a settlement
12 was reached in New England was the recognition that the
13 region took the Commission seriously when we said we would
14 act if they did not develop a regional alternative. They
15 accepted that we would act and they decided it was in their
16 interest to have greater control over the process by
17 developing a workable alternative in lieu of independent
18 Commission action. We're prepared to act in PJM as well,
19 but the approach we're taking today I think is modeled on
20 LICAP II rather than LICAP I. I hope that distinction is
21 recognized.

22 The Commission strongly encourages each region to
23 develop a solution that fits its particular circumstances
24 with respect to capacity markets and resource adequacy. We
25 recognize resource adequacy traditionally has been a state

1 responsibility and we, therefore, encourage the states to
2 play a leading role in developing regional solutions to
3 regional problems. Although the Commission will encourage
4 consensus, we will not ignore the problem and hope that it
5 goes away.

6 The lack of investment that we're seeing
7 currently in many markets will not self-correct. In areas
8 facing tight supply where there's no long-term obligation to
9 serve, energy prices are capped and capacity markets are
10 flawed. The only question really is when and where supply
11 problems will appear, not whether they will occur.

12 And I think I'm committed and I'm sure my
13 colleagues are committed to addressing and resolving these
14 problems. Resource adequacy is one of the most difficult
15 issues facing the Commission. It's difficult in part
16 because of the substance; the issues are very difficult. It
17 also involves the interplay between capacity markets and
18 market mitigation, energy markets. So on the substance it's
19 a very difficult issue.

20 There's also various ways to encourage continued
21 entry of new generation. One is through greater use of
22 long-term contracts, but the Commission role is very limited
23 here. We traditionally have authority over wholesale
24 sellers and sales. We do not regulate wholesale buyers.
25 We, as a general matter, cannot compel a wholesale buyer to

1 enter into a long-term power purchase agreement. States
2 have that authority; we do not.

3 My wife was kidding me -- I made some statements
4 saying that I had deep personal affection for long-term
5 contracts at a regional conference, and she was jealous of
6 that.

7 (Laughter.)

8 CHAIRMAN KELLIHER: I do have deep affection for
9 long-term contracts. It's a reasonable way to support the
10 development of long-term infrastructure. But we cannot
11 compel buyers to enter into long-term contracts. I think we
12 want to be careful. Whatever approach we take on capacity
13 markets certainly does not foreclose long-term contracts; if
14 anything, we want to make sure that we continue to encourage
15 them.

16 Resource adequacy is also difficult because of
17 jurisdiction. Neither federal nor state regulators have
18 perfect jurisdiction in this area, and since neither of us
19 has adequate authority to address issues alone, we have to
20 collaborate.

21 I just want to end by encouraging the PJM region
22 to develop a solution to the problem that is facing it as
23 soon as this summer, and we will certainly place a great
24 deal of weight on a workable alternative advanced by the
25 region.

1 That's probably more than I intended to say, but
2 I am ready to vote if my colleagues are. Shall we?

3 COMMISSIONER BROWNELL: I'm a little worried
4 about the long-term affection --

5 (Laughter.)

6 COMMISSIONER BROWNELL: I'll be chatting with
7 your wife.

8 CHAIRMAN KELLIHER: She reminded me that I once
9 said that I love hydro law as well.

10 (Laughter.)

11 PRESIDING JUDGE: My two mistresses are Part I of
12 the Federal Power Act and the long-term contracts. It could
13 be worse.

14 (Laughter.)

15 COMMISSIONER BROWNELL: Yeah, and you could be
16 giving discourses on capacity markets for the rest of your
17 life, but I hoped better for you, Joe.

18 (Laughter.)

19 COMMISSIONER BROWNELL: Aye.

20 COMMISSIONER KELLY: Aye.

21 CHAIRMAN KELLIHER: Aye.

22 Thank you.

23 SECRETARY SALAS: Next for discussion is E-3,
24 Entergy Services. This is a presentation by Christy Walsh,
25 Peter Nagler, and Steve Rodgers.

1 CHAIRMAN KELLIHER: You look remarkably fresh, I
2 have to say.

3 (Laughter.)

4 MS. WALSH: I don't know what any of you are
5 talking about.

6 (Laughter.)

7 MS. WALSH: Good morning, Mr. Chairman,
8 Commissioners. My name is Christy Walsh. With me are Steve
9 Rodgers and Peter Nagler. I'd also like to thank Amy
10 Demetrious and Sanjeev Jagtiani on this order.

11 This draft order approves, with certain
12 modifications, proposed revisions to Entergy's open access
13 transmission tariff to establish an independent coordinator
14 of transmission, or ICT, for the Entergy system and a weekly
15 procurement process.

16 In this draft order, the Commission also approves
17 with modification Entergy's transmission price proposal
18 which, under certain circumstances, would allow transmission
19 customers to be charged costs associated with supplemental
20 upgrades but would ensure that these customers receive
21 meaningful rights that protect them from cost of congestion.

22 The approval of the entire package of the ICT,
23 the weekly procurement process and Entergy's pricing
24 proposal is predicated in part on Entergy's representations
25 of the substantial benefits associated with the weekly

1 procurement process, as discussed in the draft order. The
2 order finds that Entergy's ICT proposal is intended to
3 approve transparency of transmission information, enhance
4 transmission access, and relieve transmission congestion.

5 Entergy's proposal is that the ICT, among other
6 things, will grant or deny requests for transmission
7 service, calculate available flowgate capability, administer
8 Entergy's open access same-time information system, and
9 perform an enhanced planning function. The weekly
10 procurement process is designed to allow merchant generation
11 and other wholesale suppliers to compete to serve Entergy's
12 native load customers through bids submitted to Entergy's
13 weekly operations. It also establishes an additional
14 mechanism for granting short-term firm transmission service
15 through redispatch.

16 The results of the weekly procurement process
17 optimization will be treated as requests for new point-to-
18 point transmission service and the designation of new
19 network resources, including offers of redispatch needed to
20 grant the new service. Entergy represents the ICT will
21 review these requests and grant or deny transmission service
22 under the OATT.

23 Our approval of Entergy's ICT proposal is
24 conditioned on Entergy committing not to file to seek a
25 termination date for the ICT agreement that is within the

1 first four years of ICT operation. During this four-year
2 period, in order to measure whether there are improvements
3 to transmission access and service under the ICT, the
4 Commission requires regular reporting by the ICT. In this
5 draft order, the Commission sets out specific metrics by
6 which it will evaluate the ICT and weekly procurement
7 process for the four-year term.

8 Finally, the Commission also intends to have
9 regular meetings with the affected state commissions to
10 discuss the ICT reports soon after they're issued. Such
11 meetings will ensure that the Commission receives feedback
12 we need to gauge the effectiveness of the ICT and the weekly
13 procurement process. Meetings with our fellow regulators
14 should also help reach consensus on whether the ICT and the
15 weekly procurement process have been successful and should
16 be continued beyond the initial period.

17 COMMISSIONER BROWNELL: Christy, could you
18 elaborate a little bit about the metrics that we're going to
19 use to evaluate how successful that is and say a little bit
20 about some of the customer involvement provisions that we've
21 included, like the users group and things like that?

22 MS. WALSH: The order provides there will be a
23 users group that will inform the ICT on matters involving
24 transmission access and what will go into the ICT's
25 determination about granting and denying transmission

1 service.

2 In addition, the Commission is provided specific
3 metrics for evaluating ICT. We're going to be looking at
4 the cost savings the ICT and the weekly procurement process
5 produces. If the number of complaints the Commission
6 receives about Entergy's transmission access are diminished
7 and making sure that the system is transparent.

8 COMMISSIONER BROWNELL: Aren't we also going to
9 ask for regular reports on data lost?

10 A continuing problem in Entergy -- a mysterious
11 one, albeit a continuing problem, accuracy of data, those
12 kinds of things, that have been issues in the past.

13 MR. RODGERS: Yes, that's correct, Commissioner.
14 Specifically, the order directs that there's going to be
15 measurements and periodic reports provided regarding whether
16 Entergy has lost data, how many times, if any, users of the
17 system were given inaccurate or incomplete data, how often
18 Energy uses inaccurate modeling assumptions, if any, how
19 frequently there are failures to timely post or provide
20 required data or posting of inaccurate data, the number of
21 times transmission users complained that available flowgate
22 capability is not available, the number of times that
23 available AFC when needed is different from what was posted
24 on OASIS, and the length of time it takes to do
25 interconnection or transmission service studies.

1 COMMISSIONER BROWNELL: Thank you. I think this
2 is important for me. This order truly represents the
3 triumph of hope over experience. Samuel Johnson said that
4 about his second marriage. This actually would be our third
5 time at bat with our friends at Entergy in trying to respond
6 to many, many, many complaints.

7 I appreciate the patience of both the Staff and
8 my colleagues, particularly -- for me, I have to tell you,
9 this is a vote of conscience. When I was going through this
10 order and struggling with how to build in the transparency
11 that I think we built in, the customer protections I think
12 we built in, the assurance of the independence of the ICT --
13 which I hope we've built in -- and a number of other
14 things, I can only think about the hundred thousand people
15 who live in Lafayette who are regularly paying more for
16 generation because they have to back down their cheaper
17 generation in order to address transmission constraints and
18 the fragility of the Entergy transmission system.

19 I can only think about the frustration of the
20 commissions, particularly Louisiana, who time and time again
21 has asked Entergy why it is their customers -- some of the
22 poorest in the nation -- cannot get access to the cheaper
23 generation that's there. I can only think of Dow Chemical
24 and Oxy and the Louisiana Users' Group who are struggling in
25 global markets to keep their businesses in Louisiana and

1 Mississippi and other parts of the Entergy system but who
2 cannot get any assurances that they, too, will have access
3 to cheaper generation.

4 And I think of what has gone on in Louisiana and
5 Mississippi and the importance to the economies there as
6 they rebuild to have a better system, to have access to
7 cheaper generation, to have a transmission system that can
8 really serve what I hope is a vibrant future but will not be
9 a vibrant future unless there is a serious commitment on the
10 part of Entergy to, at this third time at bat, make this
11 work.

12 I'm glad we have metrics because, frankly, I
13 think in my mind three strikes and you're out. I can't
14 think of another industry who would have these kinds of
15 problems that we've been dealing with almost since the time
16 I got here -- and you'll see a very painful history in the
17 opening part of this market. I can't think of anybody else
18 who would keep their franchise under these circumstances.

19 So as we move forward, I would hope that the
20 company embraces this with a sense of urgency and their own
21 sense of conscience of what they owe the customers who have
22 allowed them to have this franchise. Thank you for your
23 hard work and thank you for your patience and tolerance. As
24 I said, this really does represent the triumph of hope over
25 experience, and I hope that for once the hope wins.

1 Thank you.

2 COMMISSIONER KELLY: Thank you, Nora.

3 As the draft order makes clear, what we're really
4 doing here is approving an interdependent package of three
5 elements and three reforms: the independent coordinator of
6 transmission, the weekly procurement process, and
7 participant funding. The Commission's approval is largely
8 predicated on the predictive benefits of this package.

9 Particularly of the WPP, Nora, I think, has very
10 eloquently talked about the hope that these benefits will
11 come to fruition and the fact that there are metrics in this
12 order to enable us to monitor what those benefits are and
13 ensure that it achieves its objective.

14 I'd like to emphasize the other two elements:
15 the independent coordinator of transmission and participant
16 funding. I believe that participant funding can bring value
17 to the public interest if it's properly and fairly
18 implemented. It needs to be done well and it needs to be
19 done fairly. Then the public interest could be
20 substantially benefited in the long run. If it isn't done
21 well, it could result in the flight of investment dollars
22 from the generation sector at a time when that investment is
23 still sorely needed.

24 So to properly and fairly implement participant
25 funding, you must have two things: first, you need an

1 independent entity to make the determinations as to which
2 costs should be participant funded and which should be
3 rolled into a transmission provider's rates. I believe that
4 Entergy's ICT proposal, with the modifications we've
5 proposed, meets this requirement.

6 The second requirement is an on-going requirement
7 associated with one of the things the participant must get
8 in exchange for funding a transmission upgrade. In order to
9 avoid essentially double-charging for transmission service,
10 which would clearly be unfair, an entity that directly funds
11 a transmission grid upgrade beyond the point of
12 interconnection is entitled to some type of transmission-
13 related right in exchange. In RTO markets, this has been a
14 financial transmission right and Entergy's proposal here
15 essentially posits a financial hedge as well, though it
16 differs in many other respects from the RTO FTR's because of
17 the different circumstances present here.

18 The value of this type of right can be greatly
19 influenced by minor changes in the operation of the grid
20 that could be difficult to detect. So in other words, minor
21 changes in operation could preserve or eliminate the value
22 of this type of right. In the past, we have only approved
23 this type of funding mechanism in RTO regions where the
24 independent operation of the grid eliminates any incentive
25 to make such minor changes in ways that would

1 inappropriately advantage one competitor at the expense of
2 another.

3 The ICT's independent oversight of Entergy's
4 operation of the grid meets this on-going requirement here,
5 at least while the ICT remains in operation. If, for any
6 reason, the ICT were to cease to function and participant
7 funding is to be continued, the ICT would have to be
8 replaced by another structure of equal protective value.

9 For the present, once the ICT begins operation
10 and the WPP, both the up-front and on-going requirements
11 will be in place. And I am voting for this proposal,
12 including its participant funding mechanism, on that basis.

13 Again, I'd like to add my thanks to Nora's to the
14 Staff, who has worked long, very long and hard with us to
15 achieve an order that I'm very happy to sign on to.

16 CHAIRMAN KELLIHER: Let me add my compliments to
17 the Staff for their hard work here. Both the Staff who
18 ended up finishing this order, as well as the ones that
19 started it a number of months ago. Everyone put in a lot of
20 work on it.

21 Economic regulatory bodies in the United States
22 are typically multi-member commissions, and they're designed
23 that way to make sure a diversity of views are brought to
24 bear on difficult regulatory matters. And a diversity of
25 views has certainly been brought to bear on this order by

1 the three offices and it has been, obviously, a difficult
2 order for us to finish. And I'm actually a little surprised
3 that we're acting on it today, but I'm also relieved at the
4 same time.

5 It's probably true that the three offices have
6 spent more time on this order than any of the other orders
7 we've acted on in recent months; that's somewhat surprising
8 to say. I think it's literally true, but surprising
9 nonetheless. In fact, this order was so difficult, that
10 some of the Staff who began to work at it have since left
11 the Commission and one even left the country.

12 (Laughter.)

13 CHAIRMAN KELLIHER: I don't want to suggest a
14 causal relationship --

15 COMMISSIONER BROWNELL: It's a feeling.

16 CHAIRMAN KELLIHER: In this area, it's probably
17 fair to say we started with three different positions and
18 we've slowly worked towards consensus. I think that's a
19 tribute to the collegial way at the Commission and the
20 current Commission approaches issues. The order from my
21 point of view is not perfect; it's probably not perfect from
22 my colleagues' point of view. We all made compromises -- I
23 did. I think we all did. But we really approached it in
24 good faith and I'm very happy to vote for this order.

25 I think it really shows the Commission acting in

1 the best way, in a collegial way, in good faith, slowly
2 narrowing differences and ultimately looking to avoid
3 dissent and looking for compromise and consensus.

4 Let me make a few comments just on the order
5 itself. I won't review the substance. The Staff has
6 provided that. I just want to explain at least my reasoning
7 for supporting the order.

8 I support the ICT because it's consistent with or
9 superior to the OATT from my point of view. I support the
10 ICT because I think it will result in improved transparency,
11 higher-quality transmission service for Entergy's
12 transmission customers, improved access to the grid, and
13 fewer complaints about undue discrimination and preference
14 in Entergy's transmission service -- at least those are my
15 reasons for supporting the ICT.

16
17
18
19
20
21
22
23
24
25

1 The ICT should facilitate transmission investment
2 by virtue of its involvement in transmission planning.

3 We reviewed the ICT under Section 205 of the
4 Federal Power Act. The legal standard in there is a just
5 and reasonable standard, so, really, essentially, the legal
6 question is, is the ICT just and reasonable?

7 I think that since it is an improvement on the
8 OATT and goes beyond the OATT, it's a fairly easy legal
9 matter to conclude that the ICT is just and reasonable.

10 This is the third ICT Order approved by the
11 Commission in different months. The others had different
12 acronyms, different appellations, but it's essentially the
13 third ICT Order we've approved, going back to December.

14 That doesn't mean that ICT is a new fashion at
15 the Commission. It is an experiment, the jury's still out
16 on the ICT.

17 It probably will result in improvement in the
18 quality of transmission service, but only time will tell.
19 In this case, it's an experiment authorized for four years,
20 and it is a promising experiment, but really, ultimately,
21 only time will tell.

22 With respect to participant funding, there's
23 really little question that the Commission has the legal
24 authority to approve participant funding proposals, both
25 inside RTOs and outside RTOs.

1 There really has been a perception, though, that
2 the Commission would only consider to spend funding in RTO
3 regions. The argument was that we had the discretion to do
4 otherwise, but that we refused to exercise that discretion.

5 I think the action we're taking here today, as
6 well as the Guidance Order that the Commission issued last
7 May, shows that the Commission recognizes that it not only
8 has the legal authority, but is willing to approve funding
9 proposals outside RTO regions, under the right
10 circumstances.

11 I think the right circumstances are presented in
12 Entergy's service territory, currently.

13 I look forward to looking at the final ICT
14 agreement, which we'll see in weeks or months. I'm not sure
15 --

16 MR. RODGERS: Within 60 days.

17 CHAIRMAN KELLIHER: Thank you. But I think it's
18 important that the Commission be careful not to make changes
19 to the ICT agreement that would turn the ICT into a public
20 utility or an enable us to turn it into a public utility in
21 the future.

22 That's something that will be a flash point for
23 the states. I think, ultimately, it would be unacceptable
24 to the states and probably would cause the collapse of the
25 ICT.

1 I think, just speaking for myself, I think we
2 should really stick with the decision that we made in the
3 Entergy Guidance Order with respect to jurisdiction, and not
4 move to reverse ourselves.

5 With that, I'm happy to vote for the Order.
6 Colleagues?

7 COMMISSIONER BROWNELL: Aye.

8 COMMISSIONER KELLY: Aye.

9 CHAIRMAN KELLIHER: Aye. Thank you. And get
10 some sleep, will you?

11 (Laughter.)

12 MR. RODGERS: Mr. Chairman, if I could just
13 follow up on your comment a minute ago about Staff members
14 leaving the country, there's absolutely not truth whatsoever
15 to the rumors that the team has had to form a support group.

16 (Laughter.)

17 CHAIRMAN KELLIHER: Thank you.

18 COMMISSIONER BROWNELL: That's why this one is
19 not getting cake; it's getting something else.

20 (Laughter.)

21 SECRETARY SALAS: The final item for discussion
22 this morning is E-1, Standards for Business Practices and
23 Communication Protocols for Public Utilities.

24 This is a presentation by Marvin Rosenberg, Kay
25 Morice, Richard Maybry, Mike Goldenberg, and Gary Cohen.

1 MR. ROSENBERG: Good morning, Mr. Chairman and
2 Commissioners. E-1 is a Draft Final Rule that incorporates,
3 by reference, into the Commission's Regulations, the first
4 set of standards developed for the Wholesale Electric
5 Quadrant of the North American Energy Standards Board or
6 NAESB.

7 This Rule represents a milestone in open access,
8 same-time information system or OASIS standards development.
9 Until now, the Commission has relied on ad hoc working
10 groups to develop and maintain OASIS standards.

11 With this Rule, NAESB's Wholesale Electric
12 Quadrant is taking over this function.

13 The standards incorporated by reference, include
14 OASIS standards that replace the Commission's existing OASIS
15 standards, new OASIS standards to facilitate OASIS
16 transactions, and to address OASIS requirements of Order No.
17 2003, the Large Generator Interconnection Rule, and non-
18 OASIS business practice standards developed by NAESB, that
19 complement NERC's Version 0 Reliability Standards.

20 Each public utility will be required to comply
21 with the standards, as of July 1, 2006, however, public
22 utilities will not have to revise their open access
23 transmission tariffs until they make unrelated tariff
24 filings.

25 CHAIRMAN KELLIHER: Thank you. I'll make some

1 comments:

2 The business standards that we're approving
3 today, should improve the efficiency of business and
4 transactional processes and communications procedures.

5 I also do compliment the NERC Version 0
6 Reliability Standards. The standards really are the
7 culmination of a process initiated by the Commission, in
8 which we asked the industry to first establish a consensus
9 industrywide standards organization for the wholesale
10 electricity industry, and for that body to develop business
11 practice standards and communication protocols.

12 NAESB has fulfilled that role, and, with
13 industry, has proposed a first set of standards that we
14 incorporate by reference, with relatively minor
15 modifications.

16 Significantly, by adopting these standards and
17 through the development of the NAESB consensus approach, the
18 industry will have a formal ongoing process for reviewing
19 and upgrading the Commission's OASIS standards, as well as
20 adopting other electricity industry business practice
21 standards.

22 I just want to compliment NERC and NAESB. They
23 have worked cooperatively and in coordination, to ensure
24 that the NERC Reliability Standards and NAESB standards, are
25 harmonized and eliminate duplication or inconsistencies.

1 It's important that NERC and NAESB continue that
2 collaboration in developing appropriate standards. We rely
3 in large part on the judgment of these two organizations, in
4 making our determinations.

5 This is an area of increasing importance as the
6 Commission reviews and ultimately approves reliability
7 standards proposed by the ERO under our new EAct authority.

8 Finally, I want to commend former Chairman Pat
9 Wood for his leadership in this area. We gave him top
10 billing, E-1, on our agenda today.

11 The process that resulted in the Final Rule
12 adopting the business practice standards and communication
13 protocols for the electricity industry, began under Chairman
14 Wood in December of 2001.

15 I'm pleased we are taking the final step today.
16 If Pat is watching over the website, I want to tell him that
17 this one is for him.

18 (Laughter.)

19 CHAIRMAN KELLIHER: I'm pleased to vote for the
20 rule. Colleagues? Comments?

21 COMMISSIONER KELLY: I think it's important to
22 emphasize the amazing accomplishment that's here. It's the
23 last presentation today, but it's an example of the last not
24 being the least.

25 This process of building consensus, is a very

1 long one and a hard one. The standards that were adopted,
2 were supported by a consensus of the five industry segments:
3 Transmission, generation, market or brokers, distribution,
4 and load-serving entities, and end users.

5 That is a terrific accomplishment. I'd like to
6 thank NAESB for its contribution to making electric policy
7 better.

8 COMMISSIONER BROWNELL: I just want to add to
9 that, because I think NAESB are often the unsung heroes. I
10 don't think there's any more miserable job -- well, maybe
11 ours -- but in trying to reconcile and bring commercial
12 standards up to speed, and that will be more challenging as
13 NERC develops its standards and then continues to refine
14 them.

15 The leadership at NAESB and current leadership at
16 NERC, I think, have rather quickly gotten even more
17 effective, which will be, as you pointed out, Mr. Chairman,
18 more important in the future, both in terms of the timing of
19 things and moving along more quickly, but also overcoming
20 some barriers where it is going to be difficult to determine
21 if the ball is in which court.

22 I think they want to resolve the debate and move
23 forward quickly and not get hung up on who is going to make
24 the decisions. I'm pleased to support this Order, and
25 that's my vote, aye.

1 COMMISSIONER KELLY: Aye.

2 CHAIRMAN KELLIHER: Aye. There is no other
3 business, other than setting a meeting time for the closed
4 meeting. Is 1:00 good?

5 COMMISSIONER BROWNELL: Works for me.

6 CHAIRMAN KELLIHER: Thank you, this meeting is
7 over.

8 (Whereupon, at 11:40 a.m., the open session was
9 concluded.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25